

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALEXSIS SHONTE THOMAS,
Plaintiff,
v.
SARAH THOMAS,
Defendant.

Case No. [4:18-cv-03059-KAW](#)

**SCREENING ORDER REVIEWING
PLAINTIFF'S COMPLAINT; ORDER
CONTINUING CASE MANAGEMENT
CONFERENCE**

Re: Dkt. No. 1

On May 23, 2018, Plaintiff Alexsis Shonte Thomas filed this civil action and application to proceed *in forma pauperis*. On June 15, 2018, the Court granted Plaintiff's application to proceed *in forma pauperis*. (Dkt. No. 6.) The Court now screens the complaint pursuant to 28 U.S.C. § 1915, and, for the reasons set forth below, concludes that the operative complaint is deficient.

I. LEGAL STANDARD

The *in forma pauperis* statute provides that the Court shall dismiss the case if at any time the Court determines that the allegation of poverty is untrue, or that the action (1) is frivolous or malicious, (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A complaint is frivolous under Section 1915 where there is no subject matter jurisdiction. *See Castillo v. Marshall*, 207 F.3d 15, 15 (9th Cir. 1997) (citation omitted); *see also Pratt v. Sumner*, 807 F.2d 817, 819 (9th Cir. 19987) (recognizing the general proposition that a complaint should be dismissed as frivolous on Section 1915 review where subject matter jurisdiction is lacking).

A complaint may also be dismissed for failure to state a claim, because Section 1915(e)(2) parallels the language of Federal Rule of Civil Procedure 12(b)(6). *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000). The complaint, therefore, must allege facts that plausibly establish the defendant's liability. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007). When the

complaint has been filed by a pro se plaintiff, courts must “construe the pleadings liberally . . . to afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)(citations omitted). Upon dismissal, pro se plaintiffs proceeding *in forma pauperis* must be given leave to “amend their complaint unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.” *Franklin v. Murphy*, 745 F.2d 1221, 1235 n.9 (9th Cir. 1984) (internal citations and quotation marks omitted); *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000).

II. DISCUSSION

As courts of limited jurisdiction, “federal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction.” *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004) (noting that district courts are “obligated to consider sua sponte whether [they] have subject matter jurisdiction”). There are two bases for federal subject matter jurisdiction: (1) federal question jurisdiction under 28 U.S.C. § 1331 and (2) diversity jurisdiction under 28 U.S.C. § 1332. A district court has federal question jurisdiction in “all civil actions arising under the Constitution, laws, or treaties of the United States.” *Id.* at § 1331. A cause of action “arises under federal law only when the plaintiff’s well-pleaded complaint raises issues of federal law.” *Hansen v. Blue Cross of Cal.*, 891 F.2d 1384, 1386 (9th Cir. 1989). A district court has diversity jurisdiction “where the matter in controversy exceeds the sum or value of \$75,000 . . . and is between citizens of different states, or citizens of a State and citizens or subjects of a foreign state.” *Id.*

Here, Plaintiff appears to be alleging that she suffered employment discrimination in 2006, but she did not receive a right to sue letter until April 26, 2018. Plaintiff also did not attach the right to sue letter to her complaint. Rather, she attached the cover letter. Plaintiff’s other allegations appear to include race discrimination, sexual harassment, and the theft of her first born child. Not only does the complaint appear to be time barred, as the alleged discrimination likely occurred in 2006, but the allegations do not set forth “a short and plain statement of the claim showing that the pleader is entitled to relief” as required by Rule 8 of the Federal Rules of Civil

1 Procedure.

2 Accordingly, the Court concludes that the complaint is insufficient to satisfy Section 1915
3 review.

4 **III. CONCLUSION**

5 For the reasons set forth above, the allegations in Plaintiff's complaint are insufficient
6 under 28 U.S.C. § 1915(e)(2). Thus, Plaintiff must clearly provide the legal and factual basis for
7 all claims, and must do so by filing an amended complaint by **August 6, 2018**. The amended
8 complaint should clearly explain when the alleged discrimination occurred, and should have the
9 right to sue letter and the Department of Fair Employment and Housing complaint attached as
10 exhibits. If Plaintiff fails to file an amended complaint by that date, or the amended complaint
11 fails to cure all defects, the case will be reassigned to a district judge with the report and
12 recommendation that either the complaint be dismissed in whole or in part or the case be
13 dismissed in its entirety.

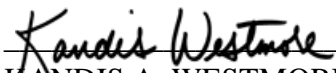
14 In amending the complaint, Plaintiff may wish to contact the Federal Pro Bono Project's
15 Help Desk for assistance—a free service for pro se litigants—by calling (415) 782-8982 to make
16 an appointment. While the Help Desk does not provide legal representation, a licensed attorney
17 may assist Plaintiff in determining whether there are viable claims, and how to properly plead
18 them.

19 Plaintiff may also wish to consult a manual the court has adopted to assist pro se litigants
20 in presenting their case. This manual, and other free information for pro se litigants, is available
21 online at: <http://cand.uscourts.gov/proselitigants>.

22 Additionally, the case management conference scheduled for August 21, 2018 is continued
23 to **October 16, 2018** at 1:30 p.m. in Courtroom 4, 1301 Clay Street, Oakland, California. The case
24 management statement is due on or before October 9, 2018.

25 IT IS SO ORDERED.

26 Dated: June 26, 2018

27 
KANDIS A. WESTMORE
United States Magistrate Judge